

# State of South Dakota

## EIGHTY-FOURTH SESSION LEGISLATIVE ASSEMBLY, 2009

400Q0182

### SENATE BILL NO. 15

Introduced by: The Committee on Health and Human Services at the request of the  
Department of Social Services

1 FOR AN ACT ENTITLED, An Act to revise certain provisions regarding the confidentiality  
2 and release of certain child abuse or neglect information.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

4 Section 1. That § 26-8A-13 be amended to read as follows:

5 26-8A-13. All investigative case records and files relating to reports of child abuse or  
6 neglect are confidential, and no disclosure of any such records, files, or other information may  
7 be made except as authorized in chapter 26-7A or this chapter. Any person who knowingly  
8 violates the confidential nature of the records, files, or information is guilty of a Class 1  
9 misdemeanor. The Department of Social Services may release records, files, or other  
10 information to the following parties upon the receipt by the department of a request showing that  
11 it is necessary for the parties to have such information in the performance of official functions  
12 relating to child abuse or neglect:

13 (1) The attorney general, the state's attorneys, law enforcement agencies, protective  
14 services workers, and judges of the courts investigating reports of known or  
15 suspected child abuse or neglect;



- 1 (2) The attorney or guardian ad litem of the child who is the subject of the information;
- 2 (3) Public officials or their authorized representatives who require the information in
- 3 connection with the discharge of official duties;
- 4 (4) Institutions and agencies that have legal responsibility or authorization to care for,
- 5 treat, or supervise a child who is the subject of the information or report;
- 6 (5) An adoptive parent of the child who is the subject of the information or report;
- 7 (6) A foster parent, kinship provider, or prospective adoptive parent who is or may be
- 8 caring for a child in the custody of the Department of Social Services who is the
- 9 subject of the information or report;
- 10 (7) A state, regional, or national registry of child abuse and neglect cases and courts of
- 11 record of other states;
- 12 ~~(7)~~(8) A validly appointed and registered child protection team under § 26-8A-17;
- 13 ~~(8)~~(9) A physician ~~who is caring for a child whom the physician reasonably suspects may~~
- 14 who is suspected or found to be abused or neglected;
- 15 ~~(9)~~(10) State hearing examiners and any person, or the legal representative of any
- 16 person, who is the subject of the report for purposes directly related to review
- 17 under § 26-8A-11; and
- 18 ~~(10)~~(11) A person eligible to submit an adoptive home study report under § 25-6-9.1
- 19 or 26-4-15. However, the information may only be released for the purpose of
- 20 screening applicants.

21 Information received by an authorized receiving party shall be held confidential by the  
22 receiving party. However, the court may order the release of the information or any portion of  
23 it necessary for determination of an issue before the court.

24 ~~However~~ Upon written request, the Department of Social Services ~~may~~ shall release

1 ~~information and findings to the media~~ findings or information regarding the abuse or neglect of  
2 a child that resulted in a fatality or near fatality of the child if unless the release of the findings  
3 or information ~~has been approved by the prosecutor who has commenced or who has authority~~  
4 ~~to commence legal action, and, if such disclosure has been authorized by the court and is not~~  
5 ~~contrary to the best interests of the child, the child's siblings, or other children in the household~~  
6 would jeopardize a pending criminal investigation or proceeding. The findings or information  
7 to be released shall relate to the acts of child abuse or neglect that caused the fatality or near  
8 fatality of the child. However, the identity of the child may never be released. For the purpose  
9 of this chapter, near fatality means an act that, as certified by a physician, ~~places~~ placed the child  
10 in serious or critical condition.